

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARKY'S MARTIAL ARTS, INC., d/b/a
KILLEARN LAKES TAEKWONDO,

Plaintiff,

-against-

FC ONLINE MARKETING, INC., d/b/a
FCOM,

Defendant.

USDC SDNY
DOCUMENT
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DATE FILED: 2/28/2020

19cv03363 (ALC) (DF)

**SCHEUDLING ORDER
FOR A DAMAGES INQUEST**

DEBRA FREEMAN, United States Magistrate Judge:

On January 8, 2020, the Honorable Andrew L. Carter, Jr., U.S.D.J., referred this case to this Court for the purpose of conducting an inquest, with respect to the amount of damages that should be awarded to plaintiff Marky's Martial Arts, Inc., ("Plaintiff"), upon the default of defendant FC Online Marketing, Inc., ("Defendant"). (*See* Dkt. 20.) Accordingly, it is hereby ORDERED that:

1. No later than March 30, 2020, Plaintiff shall serve on Defendant and file (with a courtesy copy to my Chambers) Proposed Findings of Fact and Conclusions of Law concerning damages ("Proposed Findings"). Plaintiff shall include, with such service, a copy of this Order.
2. Plaintiff's Proposed Findings should specifically tie the proposed damages figure(s) to the legal claim(s) on which liability has now been established; should demonstrate how Plaintiff has arrived at the proposed damages figure(s); and should be supported by a sworn affidavit, or a declaration under penalty of perjury, that attaches as exhibits and contains an explanation of any documentary evidence that helps establish the proposed damages.
3. Further, to the extent that Plaintiff seeks attorneys' fees and litigation costs, Plaintiff's submissions should:

- a. provide copies of her attorneys' contemporaneous time records, so that this Court may assess whether the requested fees are reasonable, *see New York Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1148 (2d Cir. 1983);
- b. address the reasonableness of the hourly rates of the attorneys working on the matter and their support staff, *see Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany*, 522 F.3d 182, 190 (2d Cir. 2008); and
- c. provide copies of invoices or other documentation substantiating the amount of costs that have been incurred.

4. Defendant shall submit a response, if any, to Plaintiff's submissions no later than April 29, 2020. Defendant is cautioned that, as a corporate entity, it may not appear in this Court without an attorney, and therefore any response that it seeks to file, including any request for a hearing on damages, *must be made through counsel* for that response to be considered by the Court.

5. IF DEFENDANT FAILS TO RESPOND TO PLAINTIFF'S SUBMISSIONS BY APRIL 29, 2020, THEN THIS COURT WILL PROCEED TO ISSUE A REPORT AND RECOMMENDATION CONCERNING DAMAGES ON THE BASIS OF PLAINTIFF'S WRITTEN SUBMISSION ALONE. FURTHER, THIS COURT WILL NOT HOLD A HEARING ON DAMAGES, UNLESS THE DEFENDANT REQUESTS A HEARING, IN WRITING, BY APRIL 29, 2020. *See Action S.A. v. Marc Rich & Co.*, 951 F.2d 504, 508 (2d Cir. 1991) (Fed. R. Civ. P. 55(b)(2) "allows but does not require . . . a hearing"); *Fustok v. Conticommodity Servs. Inc.*, 873 F.2d 38, 40 (2d Cir. 1989) ("[I]t [is] not necessary for the

District Court to hold a hearing, as long as it ensured that there was a basis for the damages specified in a default judgment.”).

Dated: New York, New York
February 28, 2020

SO ORDERED



DEBRA FREEMAN
United States District Judge

Copies to:

Plaintiff's counsel (via ECF)

FC Online Marketing, Inc. dba FCOM
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Levittown, NY 11756